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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,145	12/15/2003	Michael Bravo-Loubriel		6322

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EXAMINER

DEVORE, PETER T

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/737,145

Applicant(s)

BRAVO-LOUBRIEL, MICHAEL

Examiner

Peter T. deVore

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-10 is/are rejected.
- 7) ☒ Claim(s) 7-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to because the line thicknesses are inconsistent (see Figs. 1 and 2) and some reference numerals are improperly shared with multiple Figures (see refs 2, 7, and 19 in Figs. 1 and 2). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 7-10 are objected to because of the following informalities: Claims 7 and 10 depend from cancelled claim 1, claim 8 from cancelled claim 2, and claim 9 from cancelled claim 3. Appropriate correction is required. For examination purposes it is assumed that claims 7 and 10 depend from claim 6, claim 8 from claim 7, and claim 9 from claim 8.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation "said cartridge" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klupt in view of Pensky and Raymond.

The Klupt reference discloses a toothbrush comprising a main body (largest width portion which is cylindrical, see Figs. 1-3), a tube attached to one extreme of the main body (proximate reference numeral 12 in Fig. 2), a head attached to the extreme of the tube opposite the main body (proximate reference numeral 12 in Fig. 5), a lower bristle group (furthest down bristle group in Fig. 5), an upper bristle group (middle bristle group in Fig. 5), both groups having shorter outer than inner bristles (see Fig. 5), and a desensitizing agent outlet (outlet of the drive mechanism 38), but does not disclose a manual color-coded lever attached to the tube or that the bristles in the upper bristle group are shorter than the bristles in the lower bristle group. However, the Pensky reference discloses a similar toothbrush having bristles in the upper bristle group shorter than bristles in the lower bristle group (see Figure 4) for improved tooth cleaning and levers 22 and 23 for improved gripping. It would have been obvious to employ levers on the main cylinder of the Klupt toothbrush in view of Pensky for improved gripping, and to modify the Klupt toothbrush to have bristles in the upper bristle group shorter than bristles in the lower bristle group in view of Pensky for improved tooth cleaning. Also, the Raymond reference discloses a similar toothbrush including a color-coded grip to help the user properly brush (see col. 3, lines 7-46). It would have been obvious to color-code the levers of the modified Klupt device in view of Raymond to help the user properly brush, and note that the levers are attached to the tube via the main cylinder. Regarding claim 7, the tube further comprises drive shaft 76. Regarding claim 8, see col. 1, lines 6-10.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klupt in view of Pensky and Raymond as applied to claim 8 above, and further in view of Owens.

The Klupt reference discloses a toothbrush whose main cylinder further comprises electric motor 40, cartridge 28 with first access cover 36, battery housing 26 with a second access cover (portion of battery housing which partially covers batteries and provides access when removed, see Fig. 2), dispensing piping 52, and return piping 48, but remains silent as to how the user operates the motor and pump. However, the Owens reference discloses a similar toothbrush including buttons 26 and 28 for convenient operation of the motor and pump. It would have been obvious to employ buttons on the modified Klupt toothbrush in view of Owens for convenient operation of the motor and pump.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klupt in view of Pensky and Raymond as applied to claim 6 supra, and further in view of Rauch.

The Klupt reference discloses a toothbrush as discussed supra, but remains silent as to the method of using the toothbrush. However, the Gardiner reference discloses a method of brushing teeth including gripping the toothbrush at the "levers" as claimed (see col. 6, lines 44-54 and col. 7, lines 18-23) and brushing each set of teeth with the brush at a 45 degree angle to the teeth as claimed (see Figure 16) for improved cleaning of the teeth. It would have been obvious to utilize the modified Klupt toothbrush with the method taught by Rauch for improved cleaning of the teeth.

Response to Arguments

Applicant's arguments with respect to claims 6-10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T. deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pd *Pd*

Peter T. deVore